

permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(j) When an application is reached for processing, and it is necessary to address a letter to the applicant asking further information, the application will not be processed until the information requested is received, and the application will be placed in the pending file to await the applicant's response.

(k) When an application is placed in the pending file, the applicant will be notified of the reason for such action.

[44 FR 38501, July 2, 1979; 44 FR 40311, July 10, 1979, as amended at 46 FR 36852, July 16, 1981; 49 FR 14745, Apr. 13, 1984; 49 FR 32589, Aug. 15, 1984; 49 FR 48187, Dec. 11, 1984; 50 FR 18848, May 2, 1985; 50 FR 24522, June 11, 1985; 52 FR 21311, June 5, 1987; 53 FR 1032, Jan. 15, 1988; 54 FR 39534, Sept. 27, 1989; 55 FR 19265, May 9, 1990; 56 FR 795, Jan. 9, 1991; 56 FR 64874, Dec. 12, 1991; 61 FR 46563, Sept. 4, 1996]

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. In the case of low power TV, TV translator, and TV booster stations authorized under Part 74 of this chapter, a major change is any change in:

- (i) Frequency (output channel) assignment (does not apply to TV boosters);
- (ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;
- (iii) Antenna height;
- (iv) Antenna location exceeding 200 meters; or
- (v) Authorized operating power.

(2) However, if the proposed modification of facilities, other than a change

in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in any horizontal direction, the modification will not be considered a major change. Provided, that in the case of an authorized low power TV, TV translator or TV booster station which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interferes with broadcast or other services under § 74.703 or § 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities. Provided further, that the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Where an amendment to an application would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the

Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

(d) Applications for TV stations, other than low power TV, TV translator and TV booster stations, will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after issuance) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(1) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred to in paragraph (c) of this section will also announce the date on which all mutually exclusive applicants (including the previously accepted lead applicant) will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(1)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(2) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

(e) Except for applications for low power TV, TV translator and TV booster stations, regardless of the number of applications filed for channels in a city or the number of assignments available in that city, those applications which are mutually exclusive, i.e., which request the same channel, will be designated for hearing. All other applica-

tions for channels will, if the applicants are duly qualified, receive grants. For example, if channels 6, 13, 47 and 53 have been assigned to City X and there are pending two applications for Channel 6 and one application for each of the remaining channels, the latter three applications will be considered grants without hearing and the two mutually exclusive applications requesting Channel 6 will be designated for hearing. If there are two pending applications for Channel 6 and two applications for Channel 13, separate hearings will be held.

(f) Where applications, other than applications for low power TV, TV translator, and TV booster stations, are mutually exclusive because the distance between the respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.610, such applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the FCC.

(g) *Processing of applications for low power TV and TV translator stations.* (1) Applications for low power TV and TV translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. The FCC will specify, by Public Notice, a period for filing low power TV or TV translator applications. The filing period will open no less than 30 days after release of the Public Notice and remain open for an least five work days.

(2) Subsequently, the FCC will release a Public Notice: (i) Establishing a date, time, and place for a public lottery; (ii) accepting for filing mutually exclusive applications which were timely filed during the filing period previously specified by the FCC; (iii) designating the listed mutually exclusive applications for public lottery pursuant to the procedures set forth in

§1.1601 *et seq.*; and (iv) describing each applicant's certified preferences and selection probabilities and assigning to each applicant a number block. (It will be the applicant's responsibility to notify the FCC, within 30 days of the release of the Public Notice, or any omissions of applications or clerical or mathematical errors in preferences or probabilities. The FCC will not entertain appeals involving these matters if timely notification to the FCC has not been made.) If necessary, the FCC will release subsequent Public Notices correcting only clerical or mathematical errors and including any previously omitted mutually exclusive applications. The public lottery pursuant to the procedures set forth in §1.1601 *et seq.*, will be held no less than 30 days subsequent to the initially released Public Notice announcing the lottery. Subsequent to the lottery, the FCC will release a Public Notice announcing the selection of a tentative selectee resulting from the lottery and providing and opportunity for the filing of Petitions to Deny pursuant to the requirements of §73.3584(c). If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of a tentative selectee's application, the same will be granted. Those applications which, due to the lottery, are no longer mutually exclusive with other applications will be announced in a Public Notice proposing the grant of those applications and providing an opportunity for the filing of Petitions to Deny pursuant to §73.3584(c). Groups of mutually exclusive applicants remaining after a lottery will be designated for lottery. Applications which are not grantable due to mutual exclusivity with the permittee selected by lottery will be dismissed.

(3) If, upon examination, the FCC is unable to find that the public interest, convenience and necessity will be served by the granting of a lottery tentative selectee's applications, and it appears that a hearing may be required, the procedure set forth in §73.3593 will be followed. No further action will be taken with reference to the other applications in the lottery group from which the tentative selectee was

selected until the tentative selectee's qualifications to be a permittee are resolved. If the tentative selectee is ultimately found to be unqualified to be a permittee, the procedure set forth in paragraph (f)(2) of this section will be followed.

(4) The FCC will periodically release a Public Notice accepting for filing and proposing for grant those applications which were timely filed during the filing period specified by the FCC in a Public Notice for filing low power TV or TV translator applications, but which are not mutually exclusive with any other application, and providing an opportunity for the filing of Petitions to Deny pursuant to §73.3584.

NOTE 1: Notwithstanding paragraph (f)(1) and §73.3522(a)(3), applications for low power TV and TV translator stations will be processed within the tiered processing framework as set forth in *Notice on Interim Processing*, 45 FR 62004 (published September 17, 1980), *Order Imposing Freeze*, 46 FR 26062 (published May 11, 1981), and *Report and Order in the Matter of Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 FR 21468 (published May 18, 1982).

NOTE 2: Pursuant to §73.3584(c), the Commission may announce, by the Public Notice designating the applications for public lottery, that a Notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

(5) TV booster station applications may be filed at any time and will be subject to the following procedures:

(i) Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, or TV booster application, and providing for the filing of Petitions To Deny pursuant to §73.3584;

(ii) Any application received during the filing period for TV translator, low power TV, or TV booster applications with which it is mutually exclusive will be included in the relevant public lottery pursuant to §1.1601 *et seq.*; and

(iii) Applications received after the filing date for applications with which

it is mutually exclusive will be dismissed as an untimely filing.

[44 FR 38502, July 2, 1979, as amended at 48 FR 27205, June 13, 1983; 48 FR 34039, July 27, 1983; 49 FR 47843, Dec. 7, 1984; 52 FR 31400, Aug. 20, 1987; 55 FR 19265, May 9, 1990; 56 FR 795, Jan. 9, 1991; 56 FR 33720, July 23, 1991]

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (73.202 (b)). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Applications filed on a first come, first served basis may propose a higher or lower class adjacent, intermediate frequency or co-channel in an application for a new FM broadcast station. A licensee or permittee may seek the higher or lower class adjacent, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of the application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 of this chapter pertaining to major changes.

(2) The second group consists of applications for licenses and all other

changes in the facilities of authorized stations.

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed, and § 73.3580 will apply to such amended application. An application for changes in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Where an amendment to an application would require a new file pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed.

(e) Applications for reserved band and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30